the dates during which it is alleged that the offence was committed.

The appellants were charged under section 8(a) of the Women and Girls Protection Ordinance. Section 8 enacts :—

"8. Any person who —

(a) keeps or manages or acts or assists in the management of a brothel; or

(b) being the tenant, lessee, occupier, or the person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel; or

(c) being the owner of any premises, or the agent of such owner, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel;

shall be liable to imprisonment of either description for any term not exceeding six months or to a fine not exceeding five hundred dollars, or to both; and on a second or subsequent conviction shall be liable to imprisonment of either description for any term not exceeding twelve months or to a fine not exceeding one thousand dollars, or to both."

The sub-sections, to my mind, draw a clear distinction between a house or other place that is used simply and solely as a brothel and for no other avowed purpose — as in section 8(a) — and premises which are ostensibly and genuinely used, for example as a hotel or lodging house but which, or part of which, are used as a brothel — as in section 8(b) and 8(c).

The importance of the distinction lies in the fact that under section 8(a) there is an absolute liability on any person who takes any part in the assistance or management of such a place, whereas under sections 8(b) and 8(c) some degree of knowledge, whether express or by imputation, that the premises were being used as a brothel must be proved against the person who it is sought to charge. As to proof of knowledge by imputation, see the case of *Tan Poh Whatt v. Public Prosecutor*[3].

In the instant case there was, of course, clear evidence that the premises were a hotel duly licensed as such, and that some degree of legitimate trade and commerce of the Hotel, in the ordinary course of its business was going on within its precincts. In my view, therefore, the charge was wrongly laid under section 8(a) and should have been brought under section 8(b). The cases of *Michi & Anoyu v. Rex*[2] and *Tan Poh Whatt v. Public Prosecutor*[3] would seem to support this view. In the former case the premises in question were a hotel and in the latter a lodging house. In both cases the charges were brought under section 7(b) (now section 8(b)).

In conclusion I regret to say that I must draw attention to what I consider the scandalous delay in the disposal and determination of this case.

The complaint was lodged on the 10th July 1956. The accused appeared in Court on the 20th September, 1956 and pleaded not guilty to the charges.

After various adjournments the case came on for the trial on the 28th December, 1956.

It was finally concluded and the accused convicted on the 26th February, 1957.

It took, therefore, a matter of over seven months for this case to be determined. No adequate or satisfactory reason is disclosed upon the record to offer any explanation whatsoever for the undue length of time taken in its determination. The effect of such delay is not only to dull the memory of potential witnesses as to the details of the incidents concerning which they are called upon to testify but also — and of far more sinister importance in this country — to afford an opportunity to evil-minded persons to tamper with and improperly influence actual or potential, but reluctant, witnesses. Inexcusable delays of this nature can do nothing but bring the due and proper administration of justice into contempt and disrepute.

I regret that I should have to add still further to these criticisms by pointing out that it apparently took the learned Magistrate just under six months — from the 27th February, 1957, when the Notice of Appeal was lodged, to the 10th August, 1957, — to prepare and sign his extremely brief typewritten grounds of judgment.

I have reluctantly considered it necessary to allow these appeals and set aside the convictions and sentences. However, I would again draw attention to the fact that the evidence as accepted by the learned Magistrate established that the three women, admitted prostitutes, were found in the rooms of this Hotel when it was raided by the Police; that they were there for the purpose of prostitution; and that they had been conducted there by an employee of the Hotel to whom the moneys for their services had been paid by the three Policemen. No doubt these are matters that will be brought to the notice of the proper Licensing Authority if and when the management of this Hotel thinks fit to apply for a renewal of its licence.

*Appeal allowed.*

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## ANTHONY v. PUBLIC PROSECUTOR

[A. Cr. J. (Smith J.) July 18, 1957]

[K. L. — Criminal Appeal No. 23 of 1957]

*Criminal procedure — Police investigation before Public Prosecutor's order to investigate — Statement made — Whether made in course of judicial proceeding — Criminal Procedure Code (Cap. 6), ss. 108(ii) and 112 — Penal Code, s. 193.*

In this case a police officer conducted an enquiry into a non-seizable case without the order of the Public Prosecutor under section 108(ii) of the Criminal Procedure Code (Cap. 6). In the course of that enquiry the appellant made a certain statement which the police officer purported to record under section 112(i) of the Code. The case into which the police officer was making enquiries subsequently came to trial. The appellant was a witness at the trial and gave evidence completely at variance with his statement to the police officer: subsequently the appellant was charged under section 193 of the Penal Code it being alleged that he had made contradictory statements in a judicial proceeding.

**Held:** since the police officer recorded the appellant's statement before the order of the Public Prosecutor had been obtained under section 108(ii) of the Criminal Procedure Code, the special powers in relation to police investigations under Chapter XIII of the Code had not arisen and as a result the appellant was not bound to answer truly all questions put to him by the police officer purportedly under section 112 of the Code. As a result the statement made to the police officer was not made in the course of a judicial proceeding.

MAGISTRATE'S CRIMINAL APPEAL.

*K. Chelvanayagam* for the appellant.

*H. S. Ong* (Federal Counsel) for the respondent.

**Smith J.** : — In this case the prosecution conceded that the investigation began before the order of the Public Prosecutor to investigate was given. Consequently, there was no obligation for any person interviewed by the Police before such order was given to tell the truth when giving his statement (see sections 108(ii) and 112(iii) of the Criminal Procedure Code). The prosecution of the accused should never have been commenced, and although the accused has pleaded guilty, acting in revision I reversed the finding and sentence and acquitted the accused/appellant.

*Order accordingly.*

## CHEW KEAN KOR v. BEH SENG SIEW

[O. C. J. (Syed Sheh Barakbah J.) June 26, 1958]

[Ipoh — Civil Suit No. 234 of 1956]

*Bankruptcy — Vesting of bankrupt's property in Official Assignee — Whether Official Assignee is trustee or agent for bankrupt — Right of a discharged bankrupt to interfere with the administration in bankruptcy — Discretion of Official Assignee to admit proof of debt — Nature of a bankrupt's right to surplus — Right of discharged bankrupt to vary or rescind admission of proof of debt or to obtain refund of dividend paid to creditor in bankruptcy if admission of proof improperly or fraudulently obtained — Equitable right of discharged bankrupt against creditor in bankruptcy.*

In this action the plaintiff, a discharged bankrupt, claimed from the defendant $16,929-68 being, he alleged, the amount unlawfully received by the defendant from the Assistant Official Assignee, Penang, together with interest from date of judgment to date of satisfaction and costs. Counsel for the defendant submitted that the plaintiff had no right of action to set aside an admission of proof of debt to a creditor in bankruptcy by the Official Assignee, or obtain a refund of dividend wrongly paid by the Official Assignee to such creditor in bankruptcy. In reply, counsel for the plaintiff stated that the plaintiff was suing the defendant creditor for obtaining the amount by fraudulent means and that there was no authority to show that a discharged bankrupt could not sue a fraudulent creditor in Court.

**Held:** (1) the property of a bankrupt became the property of the creditors and the Official Assignee was the trustee for the creditors. Thereafter, only the trustee could deal with the property and only he could effectively complain against the creditors;

(2) the bankrupt could not go behind the trustee;

(3) a discharged bankrupt has no *locus standi* and has no right of action to set aside an admission of proof of debt to a creditor in bankruptcy by the Official Assignee or obtain a refund of dividend wrongly paid by the Official Assignee to such creditor in bankruptcy;

(4) the proper course for the plaintiff would be to adopt the procedure as provided by section 79 of the Bankruptcy Enactment (Cap. 55);

(5) in this case the plaint disclosed no cause of action against the defendant.

*Cases referred to :—*

(1) *Jarrett v. Barclays Bank Ltd.* (1947) 1 Ch. 54.

(2) *In re Debtor* (1949) 1 Ch. 236.

(3) *Ex parte Harper, In re Tait* (1882) 21 Ch. D. 537.

(4) *Lewis v. Leonard* (1880) 5 Ex. D. 165.

(5) *In re Leadbitter* (1878-9) 10 Ch. D. 388.

(6) *Harper v. Greensill* (1873) 42 L.J.C.P. 55.

(7) *Barter v. Dubeux & Co.* (1880-1) 7 Q.B.D. 413.

(8) *Ex parte Sheffield, In re Austin* (1878-9) 10 Ch. D. 434.

(9) *In re Harris* (1899) 2 Q.B. 97.

CIVIL SUIT.

On February 15, 1952 the plaintiff, who was in need of funds, obtained from the defendant, a sum of $8,000 in exchange for a post-dated cheque for the same amount payable on March 15, 1952. On the representation of the plaintiff that he would be unable to meet the cheque, it was never presented to the Bank. In 1953, defendant brought an action for recovery of $8,000 due on the said cheque. The plaintiff in his defence, alleged that relying on the representation of the defendant that the cheque was out of date he gave the defendant a further cheque for $8,000 some time later in settlement and that again in June 1952, at the insistence of the defendant, he paid him $8,000 in cash in full settlement but the plaintiff did not return either of the two cheques. The defendant denied these allegations. The plaintiff further alleged that he gave a cheque for $500 to the defendant by way of interest. The defendant, however, alleged that the cheque for $500 was given in exchange for cash.

During the pendency of the action, the plaintiff was adjudicated a bankrupt in 1954. The defendant